

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 10444 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO LTD. - Petitioner(s)

Versus

MAHIJIBHAI MANGALBHAI GOHIL - Respondent(s)

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Appearance :

MR PV NANAVATI for Petitioner(s) : 1, MR VIBHUTI NANAVATI for
 Petitioner(s) : 1,
 MR TR MISHRA for Respondent(s) : 1,
 MR DS CHAUHAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**Date : 21/11/2005****ORAL JUDGMENT**

1. The petitioner, namely, United India

Insurance Company Limited, has filed this petition under Articles 226 and 227 of the Constitution of India, praying for quashing and setting aside the judgment and award dated 12.8.1996 passed by Industrial Tribunal, Ahmedabad in Reference (ITC) No.46 of 1991. The Court has admitted the matter and issued rule on 11.3.1997 and interim relief was continued subject to the provision of Section 17-B of the Industrial Disputes Act. It is the case of the petitioner that the respondent – workman has alleged that he has worked with the petitioner – Company from 29.12.1980 to 24.12.1981 and he has been given artificial break during that period. It is also alleged in the statement of claim that he had performed his duties with the petitioner Company upto 15.6.1983 and thereafter, his services were illegally terminated. It was contention of the respondent – workman before the Labour Court

that he had completed more than 240 days of continuous service and, therefore, he was entitled to continue in service and since the action of the respondent Company was illegal arbitrary and violative of provisions of Sections 25-F, 25-G and 25-H, the petitioner was required to be reinstated with full back-wages in the service of the petitioner Company.

2. As against the case of the respondent – workman, the petitioner's case before the Labour Court was that the respondent was engaged on temporary basis whenever temporary work was available on leave vacancies. It was also the case of the petitioner that during the period he was so engaged he was very irregular and was not performing his duties properly. The petitioner has also contended that the respondent – workman was only a casual employee and not employed after following the due

procedure through the employment exchange and was not entitled to continue in service nor was he entitled to any back door entry in the service of the petitioner - Company. The petitioner has also contended that admittedly the respondent worked upto 24.12.1981 or at the most upto June 1983. Thereafter, having got a better opportunity elsewhere he had left the services of the petitioner – Company. He has raised a dispute after 10 years seeking reinstatement with back wages in service. It was, therefore, contended that the petitioner was not in service for the last 10 years.

3. Mr.Vibhuti Nanavati, learned advocate appearing for the petitioner has submitted that the service of the petitioner was terminated on 24.12.1981 and that the reference was sought in the year 1991, after a considerable period of 8 to 10 years. Mr.Nanavati, has further

submitted that the respondent was a casual employee employed only when temporary or casual work was available. It is further submitted that the respondent workman was not suggested by the employment exchange and he was not regularly appointed person. He has, therefore, submitted that the respondent was seeking a back door entry in the employment of the petitioner Company, which was not permissible under law and, therefore, the Tribunal has erroneously passed an order reinstating the petitioner with or without back wages.

4. Mr.Nanavati, has further submitted that the respondent – workman was all through-out servicing elsewhere and it was specific contention of the petitioner Company that he left the services of the petitioner Company where he was being given casual work, for a better opportunity and in fact, in view of that

fact, did not prefer any proceedings for about 8 to 10 years which factor could not be taken into consideration by the Tribunal. Mr.Nanavati has further submitted that the respondent has not put continuous service of 240 days. In support of his contention Mr.Nanavati has relied on a decision of Hon'ble Supreme Court in the case of D.G.M. Oil & Natural Gas Corporation Ltd., & Anr. vs. Ilias Abdul Rehman, reported in JT 2005 (11) SC 87, wherein the Court has observed that a perusal of the evidence adduced by the workman himself shows that he went in search of employment to different places and whenever there was a temporary employment available in different departments of the appellant – Corporation; be it the field work or the work in the Chemistry department, he accepted the employment and worked in these departments not in one place alone but at different places like Baroda and

Mehsana. The Court has further observed that the Management did try to accommodate the appellant in a permanent job but could not do so because of lack of qualification. In such circumstances the Court thought that the Industrial Tribunal was justified in coming to the conclusion that the number of days of work put in by the respondent in broken periods, could not be taken as a continuous employment for the purpose of Section 25F of the Act, as has been held by the Apex Court in the case of Indian Cable Co. Ltd., (Supra). The Court has also considered that the decision of Indian Cable Company Ltd., (Supra) was rendered in the context of Section 25G of the Act, still the Court was of the opinion that the law for the purpose of counting the days of work in different departments controlled by an apex Corporation will be governed by the principles laid down in the judgment of Indian Cable

Company Ltd., and the Industrial Tribunal was justified in dismissing the Reference. Mr.Nanavati has, therefore, submitted that on three counts, namely, daily wages, voluntary leaving the corporation by the respondent workman and non-completion of 240 days, the reference ought to have been dismissed by the Labour Court and the petition is, therefore, required to be allowed.

5. Mr.U.T.Mishra, learned advocate appearing for Mr.T.R.Mishra, for the respondent – workman has submitted that the order passed by the Labour Court is sustainable. He has submitted that the petitioner was pursuing the matter with the Labour Commissioner and representations were made on different occasions. The respondent – workman's case was not considered and hence the reference was made in the year 1991. He has further submitted that there is no evidence on

record to establish the fact that the petitioner has voluntarily resigned and that he has willfully accepted the new establishment. He has further submitted that the respondent – workman has completed more than 240 days and Labour Court as a matter of fact has given finding that the respondent has completed 240 days. Finding of fact is challenged in this petition under Article 226 and 227 and it is not open for this Court to reappreciate the evidence. He has, therefore, submitted that the order passed by the Labour Court be upheld by the Court and the petition deserves to be dismissed.

6. In support of his submission Mr.Mishra has relied on the decision of Hon'ble Supreme Court in the case of Sapan Kumar Pandit vs. U.P.State Electricity Board, reported in 2001 LLR 900, wherein it is held that no time limit is fixed

for making the reference for a dispute for adjudication. Wherein it is held that there are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. The Court has further observed that when the Government have chosen to refer the dispute for adjudication under Section 4K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its

reliefs. The Court therefore took the view that the High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication.

7. Mr.Mishra has further relied on decision in the case of Murugesan K. And Management of Baragath Industries and Another, reported in 2002-I- LLJ page-289, wherein the Court has taken the view that self employment cannot be considered to be a permanent employment. As and when there is any need one can do odd jobs and earn something for family. This being not a regular income, the finding of the Labour Court that petitioner had earned his livelihood from out of self employment and as such is not entitled to back wages cannot be sustained.

8. Mr.Mishra has thereafter relied on the decision in the case of of Gujarat Water Supply

and Sewg. Board vs., Dineshbhai M. Solanki,
reported in 2005 (2) GLH 62, wherein the Court has observed that the respondent has worked under the petitioner for more than 240 days in a year more particularly from 9.5.1986 to 28.7.1987 but the service of the respondent has been terminated by the petitioner without following mandatory procedure and without paying retrenchment allowance to the respondent. Further, it also appears from the record that the petitioner has terminated the service of the respondent keeping the junior to the respondent in service and thereby the petitioner has violated the settled principle of "last come first go".... The Court has further observed that the contention of the petitioner that the petitioner had left the service on his own, is contrary to record and appears to be afterthought. Further, the petitioner has failed to establish the

appointment of the petitioner was for the particular project and for a limited work. Even the petitioner had failed to give the name of the so called project before the Labour Court. Further-more, as per the settled law, this Court cannot reappreciate and reweigh the evidence as this Court has limited jurisdiction under Articles 226 and 227 of the Constitution of India.

9. Mr.Mishra has relied on the decision of Hon'ble Supreme Court in the case of R.M.Yellatti vs. The Assistant Executive Engineer, reported in 2005 (9) SCALE, 139, wherein the Hon'ble Supreme Court has made observation with regard to cases concerning retrenchment / termination of services of daily wage earners, particularly those who are appointed to work in Government departments. Daily waged earners are not regular employees.

They are not given letters of appointments. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the Government departments, the officers / clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, the Court took the view that the State Governments should take steps to maintain proper records of the services rendered by the daily wagers; that these records should be signed by the competent designated officers and that at the time of termination, the concerned designated officers should give certificates of the number of days which the labourer / daily wager has worked.

This system will obviate litigations and pecuniary liability for the Government.

10. Looking to the factual position and decided case law, Mr.Mishra has submitted that the Labour Court has given the just and correct decision, which cannot be interfered with by this Court while exercising power under Articles 226 and 227 of the Constitution of India.

11. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings made by the parties in their memo of petition as well as the affidavit in reply and after having considered the authorities cited before the Court, the Court is of the view that so far as the present case is concerned, it is an admitted position that the respondent – workman

has initially worked during the period from 29.12.1980 to 24.12.1981. It is the case of the respondent – workman that he has worked for continuous period of 240 days. Labour Court has also accepted the presence of the respondent – workman and arrived at the conclusion that the respondent workman has worked for 240 days. As per the Labour Court's award, since the respondent workman has worked for 240 days as per the procedure prescribed under the Industrial Disputes Act, the termination of the respondent – workman was illegal. While arriving at the conclusion that the respondent workman has worked for 240 days the Labour Court has relied upon the statement produced by the petitioner before the Labour Court for the year 1981. As per the said statement respondent – workman was stated to have worked for 263 days. However, the monthly break up was given in the said statement and

plain reading of the said statement makes it clear that it was not in a continuous service of 240 days. In the month of December, 1980 and January, 1981 the respondent has worked for 22 days and in February, 1981 for 19 days, in March, 1981 for 23 days, in April, 1981 for 23 days, in May, 1981 for 23 days, in June, 1981 for 25 days, in July, 1981 for 23 days, in August, 1981 for 25 days, in September, 1981 for 20 days, in October, 1981 for 18 days, in November, 1981 for 20 days and in December, 1981 for 22 days. In this statement it is very clear that there are certain breaks during all these dates. Except this statement there is no other evidence before the Labour Court. The contention was also raised before the Labour Court on the basis of circular issued by the Insurance Company that the record of more than five years could not be maintained. For this reason, the petitioner could not produce record

before the Labour Court. The very fact that the petitioner has filed reference after 10 years is itself sufficient to hold that the petitioner cannot be compelled to produce record. Even otherwise, the fact regarding the employment of the respondent workman is established and this would give rise to the presumption that the petitioner himself has left the job only with a view to get some good opportunity with the other establishment or for the reasons best known to him. The present petitioner could not have been saddled any liability under the Industrial Disputes Act. The decisions relied on by Mr.Mishra in support of the respondent workman are distinguishable on facts. There is no proper justification for filing of the reference after more than 10 years. Here in the present case the delay is not the only ground for quashing the award of the Labour Court. Over and above this the

Court is satisfied that the respondent workman has not put continuous service of 240 days and the respondent workman has himself accepted the employment in other organization.

12. In this view of the matter, the decision relied on by Mr. Nanavati in support of his case clearly helps the petitioner to take the view that the respondent workman has not completed 240 days continuous service. The decision of Hon'ble Supreme Court in the case of Shri R.M. Yellatti also does not render any assistance to the respondent workman and in that case the reference was immediately made to the Labour Court and the record of attendance register could not be produced by the petitioner - Company. Here in the present case the reference is filed after 10 years and there is plea which is having some bearing that the old record of more than 5 years could not

be produced before the Labour Court. The decision of this Court in the case of Gujarat Bottle Supply (Supra) also does not render any assistance to the petitioner as in the present case there is no reappraisal of necessary evidence. The Labour Court has relied on the statement. On the basis of the said statement 240 days are not completed. Thus, considering the entire facts and circumstances of the case and taking overall view of the matter, the Court is of the view that the Labour Court is not justified in granting reinstatement with 50% back wages. Since the respondent workman has not completed 240 days he has not filed reference for more than 10 years and since the respondent workman has accepted other establishment, the Court is not inclined to uphold the order passed by the Labour Court. Since the amount under Section 17-B was paid by the petitioner to the respondent workman as per

the Court's order, Mr.Nanavati will not ask for the refund of the said amount. Accordingly, the impugned order passed by the Labour Court is set aside and the petition is allowed and rule is made absolute to the above extent.

kks

(K. A. PUJ, J.)